

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

January 12, 2005

OFFICE OF
MANAGING DIRECTOR

Robert Lewis Thompson, Esq.
Smithwick & Belendiuk, PC
5028 Wisconsin Ave., NW, #301
Washington, D.C. 20016

Re: WDLP Broadcasting Company, LLC
FY 2004 Regulatory Fee Waiver Request
Fee Control No. 00000RROG-04-089

Dear Mr. Thompson:

This is in response to your request dated August 18, 2004, for a waiver of the regulatory fees for Fiscal Year (FY) 2004, filed on behalf of WDLP Broadcasting Company, LLC, (WDLP), licensee of station WSBS-TV, Channel 22, Key West, Florida, and eight affiliated LPTV/TX stations throughout the Miami-Fort Lauderdale DMA,¹ on the basis of financial hardship. Our records reflect that you have not paid the FY 2004 regulatory fees which you state are approximately \$19,255.00.

You recite that WDLP is suffering "dire financial straits and massive operating losses." You assert that WDLP experienced a net operating loss of nearly \$2,000,000.00 during the first six months of 2004. In support, you submit a document entitled "WDLP Broadcasting Company, LLC: Profit and Loss: January through June 2004" (*Profit and Loss Statement*). You state that the net operating loss shown on the *Profit and Loss Statement* does not include payments to principals, depreciation expenses, or amortization charges. You assert that no officer or member of WDLP has ever been paid a salary or any other remuneration by the company.

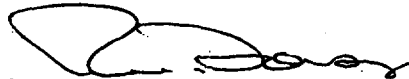
In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995). In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation or similar items are considered funds available to pay the fees.

¹ WDLP is the licensee of the following stations in Florida: WDLP-CA, Pompano Beach; WGEN-LP, Miami; W54BB and W64N, both of Rock Harbor; W38AA, W63AL, and W65AP, all of Marathon; and W39AC, Key West.

Our review of the record, including WDLP's *Profit and Loss Statement*, indicates that WDLP suffered a financial loss of \$1,947,338.70 in the January through June 2004 time period, exclusive of any charges for depreciation and amortization, or compensation paid to its principals and officers. Given that WDLP suffered a financial loss in the January through June 2004 time period, we grant your request for a waiver of the regulatory fees for FY 2004.²

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

² Because we grant WDLP's request for waiver of the regulatory fees based on financial hardship, the additional grounds you raise in support of the waiver request are moot.

00000 RROG-04-089

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Before the
Federal Communications Commission
Washington, DC 20554

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AUG 19 2004

Federal Communications Commission
Office of Secretary

In the Matter of

Request for Fee Waiver and Petition
For Deferment

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) Fee Control No. _____
)
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WDLP Broadcasting Co., LLC
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To: Secretary
Attn: Office of the Managing Director, Room 1-A625
Regulatory Fee Waiver Request

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**Request of WDLP for Waiver of 2004 Regulatory Fees
and Petition for Deferment**

Robert Lewis Thompson
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FINANCIAL OPERATIONS
CENTER

August 18, 2004

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Request of WDLP for Waiver of 2004 Regulatory Fees and Petition for Deferment

WDLP Broadcasting Company, LLC ("WDLP"), licensee of WSBS-TV (formerly WDLP-TV), Channel 22, Key West, FL ("Station WDLP") and eight affiliated LPTV/TX stations throughout the Miami-Ft. Lauderdale DMA,¹ respectfully submits this **Request for Waiver of 2004 Regulatory Fees and Petition for Deferment** ("Request").² The total amount of fees at issue for these stations is approximately \$ 19,255.00.

In establishing a Congressionally-mandated regulatory fee program a decade ago, the FCC recognized that, in certain instances, the payment of a regulatory fee may impose an undue financial hardship upon a licensee. Accordingly, the FCC's adoption of a regulatory fee scheme expressly included the opportunity in appropriate cases for the FCC to grant a waiver of its fee requirements where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5344 (1994), recon. granted, 10 FCC Rcd 12759 (1995). In its decision on reconsideration, the Commission explained that a waiver would be appropriate only when "the impact of the regulatory fee will affect a regulatee's ability to serve the public." Id., 10 FCC Rcd at 12762 at para. 13.

In reviewing a Petitioner's evidence as to "financial hardship," the FCC relies on a licensee's "cash flow," as opposed to the entity's "profits" in determining whether the station(s) lack sufficient funds to pay the regulatory fees and maintain service to the

¹ WDLP is the licensee of: WDLP-CA, Pompano Beach, FL; WGEN-LP, Miami; W54BB and W64AN (both Rock Harbor, FL); W38AA, W63AL and W65AP (all Marathon, FL); and W39AC, Key West, FL.

² The Petition for Deferment is appropriate because WDLP is seeking to "toll" the payment of the disputed fees pending resolution of its Request. See 9 FCC Rcd, infra, at 4354 para. 34,

public. Thus, (a) funds paid to principals, (b) any deductions for “expenses” such as depreciation or amortization and (c) similar non-cash items that do not affect “cash flow” must be excluded in any petitioner’s financial showing of “hardship.”

In support of WDLP’s Request, the Licensee submits a Profit and Loss Statement, prepared by one of WDLP’s officers in direct consultation with the LLC’s certified public accountants, which shows a net operating loss of nearly \$2 million dollars (Two Million Dollars) during just the first six months of 2004. See Appendix A. As shown in the January-June 2004 P&L, the net operating loss for WDLP does NOT include any payments to principals, any depreciation expenses, or any amortization charges. Id.³ The proper exclusion of those non-cash expense items is separately attested to by the P&L’s sponsoring LLC member. Id. No officer or member of WDLP LLC has ever been paid a salary. Id. This is a compelling showing of severe financial hardship. There are no “funds available” to pay the nearly \$20,000.00 in FCC annual regulatory fees.

Moreover, there are additional compelling and extraordinary reasons why the public interest would be better served by the FCC’s grant of this Request. First, this Station is assigned to the Miami-Fort Lauderdale DMA but, in fact, is licensed to and transmits from Key West, FL, more than 120 miles southwest of Miami; the Station’s Grade B signal does not extend even half-way up the sparsely populated Florida keys, much less into Dade or Broward Counties or the city of Miami.⁴ The FCC has recognized that relief from the FCC’s annual regulatory fee obligations is appropriate for such stations. See 10 FCC Rcd at 12763 para. 21. In addition, special consideration also should be given because this Station, while assigned to the nation’s 17th largest DMA, is

³ Even when interest expense is excluded, WDLP’s net ordinary loss exceeds \$1.7 million.

⁴ Official notice (from the Station’s Form 302 application on file at the FCC) requested.

not only located outside of Miami's "metropolitan area and do[es] not provide a Grade B signal to a substantial portion of the market,"⁵ the Station lacks any network affiliation, a factor recognized by the FCC as worthy of consideration in fee waiver cases. See 10 FCC Rcd at 12763 para. 21.

Second, the programming of this Station, a largely "infomercial" TV station previously (acquired by WDLP in 2003), was "re-launched" by its distinguished owners (Dr. William C. De La Pena and his wife) last Fall; in less than one year, this Station has achieved both critical acclaim and ratings that often match those of the local flagship station of network giant Telemundo.⁶ Indeed, this Station is presently the only full-power TV station in the United States that broadcasts LIVE, LOCAL PRIMETIME programming in Spanish, most of which is directed to the discussion of controversial issues of public importance. This Station is endeavoring to present precisely the type of LOCAL programming that FCC Chairman Michael Powell has urged licensees to broadcast more of. See Localism Rulemaking, Notice of Inquiry, FCC 04-129, released July 1, 2004.⁷ As explained by one of the LLC members, WDLP already has had to cancel certain of its acclaimed LOCAL, PRIMETIME programming because of the extent of unforeseen operating losses; the licensee is striving to cut expenses further and, in that context, a forced payment of \$20,000 in FCC regulatory fees may lead to further cutbacks in the Station's innovative LOCAL programming. See Appendix A, supra.

In sum, it is not only the Licensee's dire financial straits and massive operating losses that make this a compelling case for a Waiver of Regulatory Fees, but also that this

⁵ Id.

⁶ See Miami Herald, August 16, 2004, attached hereto as Appendix B.

⁷ The Station's highly acclaimed LOCAL, PRIMETIME programming is simulcast on its Class A station (WDLP-CA, Pompano Beach, FL) and on its many TX's throughout Dade and Monroe Counties, FL.

is an extraordinary case where the Licensee's commitment to LOCAL, PRIMETIME programming in Spanish – even in the midst of staggering financial losses in the millions of dollars – that overwhelmingly makes this Request an appropriate one where a waiver from the FCC's annual regulatory fees is manifestly in the public interest. See 10 FCC Rcd at 12762 para. 13.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Thompson", with a stylized flourish at the end.

Robert Lewis Thompson
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5028 Wisconsin Ave., NW #301
Washington, DC 20016
(202) 363-4050

Counsel for WDLB Broadcasting
Company, LLC

August 18, 2004